

CITY OF NEWPORT NEWS GRIEVANCE PROCEDURE

FROM THE NEWPORT NEWS CODE OF ORDINANCES

CHAPTER 2, ARTICLE V., EMPLOYEE GRIEVANCES

Sec. 2-181. Policy.

It is the policy of the City of Newport News to encourage resolution of employee problems and complaints in an environment wherein employees may freely discuss their concerns with immediate supervisors and upper management. However, to the extent that such concerns cannot be resolved by other means, a grievance procedure is established to afford an immediate method for the resolution of disputes which may arise between the city and its employees. An employee filing a grievance or participating in the grievance of another employee may follow the grievance procedure with complete freedom from reprisal.

Sec. 2-182. Definition of grievance.

A grievance is a complaint or dispute of an employee relating to his or her employment, including but not necessarily limited to:

- (1) Disciplinary actions including disciplinary demotions, suspensions and dismissals, provided that dismissals shall be grievable when they result from formal discipline or unsatisfactory job performance;
- (2) The application of personnel policies, procedures, rules and regulations;
- (3) Discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin or sex; and
- (4) Acts of retaliation initiated as a result of the employee's use of or participation in the grievance procedure; or because the employee has complied with any law of the United States or of the Commonwealth of Virginia, has reported any violation of any such law to a government authority, has sought any change in law before the Congress of the United States or the General Assembly; or has reported an incidence of fraud, abuse or gross management.

In grievances brought under paragraphs cited above, the employee must state specific facts and circumstances in the grievance to support his or her complaints of grievability. Mere allegation of such actions or circumstances will not support grievability.

Sec. 2-183. Management rights and non-grievable issues.

Management reserves the exclusive right to manage the affairs and operations of the city. Included are the rights to establish job duties, job descriptions and job requirements, to assign and direct the work of employees, to determine the methods, means and personnel by which work activities are to be carried out, to establish personnel and operating policies, procedures, rules and regulations, to hire, promote, transfer, assign and retain employees, to establish standards for acceptable performance and conduct, and to establish wages and salaries, position classifications and general benefits. Therefore the following complaints are not grievable:

- (1) Establishment and revision of wages and salaries, position classifications or general benefits;
- (2) Work activity accepted by the employee as a condition of employment or work activity which may reasonably be expected to be a part of job content;
- (3) The content of ordinances, statutes or established personnel policies, procedures, rules and regulations;
- (4) Failure to promote except where the employee can show established promotional policies or procedures were not followed or applied fairly;
- (5) The methods, means and personnel by which city operations are to be conducted;
- (6) Except where such action affects an employee who has been reinstated within the previous six (6) months as the result of the final determination of a grievance, termination, layoff, dismissals or suspension from duties because of a lack of work, a reduction in work force, or job abolition;
- (7) Employee performance evaluations;
- (8) The hiring, promotion, transfer, assignment and retention of employees by the city; and
- (9) The relief of employees from duties in emergencies.

In any grievance brought under the exception in paragraph (6) above, the action shall be upheld upon a showing by the city that: (i) there was a valid business reason for the action and (ii) the employee was notified of such reason in writing prior to the effective date of the action

Sec. 2-184. Coverage of personnel.

All regular full time employees covered by the Classification and Pay Plan of the City of Newport News and regular part-time employees are eligible to file grievances in accordance with this policy with the exception of:

- (1) Employees in the employment probationary period or in a formal extension of the employment probationary period;
- (2) Appointees of elected groups or individuals;
- (3) Department heads and assistant city managers;
- (4) Employees who have resigned may not have access to the grievance procedure after the effective date of the resignation unless the grievance was initiated prior to the effective date of the resignation;
- (5) Law enforcement officers as defined by Chapter 10.1(52.1—116.1 et seq.) of Title 2.1 whose grievance is subject to the provisions of Chapter 10.1 and who have elected to proceed pursuant to those provisions in the resolution of their grievance. A law enforcement officer shall be given written notification of his/her rights to initiate a grievance under this procedure and shall be provided with a copy of this procedure upon request. The law enforcement officer may proceed under either this grievance procedure or under the provisions of Chapter 10.1 of Title 2.1 of the Code of Virginia, but not both.
- (6) Temporary, limited term and seasonal employees are not eligible to file grievances under this grievance procedure.
- (7) Employees of the Newport News Department of Social Services are included in this grievance procedure.
- (8) Employees of constitutional officers are not covered by this procedure; however, these employees may be covered by this procedure if agreed to by both the constitutional officer and city council.

Sec. 2-185. Determination of access, grievability and compliance.

(a) Determinations of access to the grievance procedure shall be made by the director of human resources in writing to the employee at any time prior to the panel hearing.

(b) Determinations of grievability are made by the city manager or designated representative in writing at any time prior to the panel hearing. A copy of the city manager or designee's ruling on the issue of grievability shall be sent to the grievant.

(c) Determinations on access and grievability may be appealed to the Circuit Court of Newport News for a hearing on the issues of whether the employee has access to the procedure, and whether the issue is grievable. Proceedings shall be initiated by the grievant by filing a notice of appeal with the city manager or designee within ten (10) calendar days from the date of the receipt of the determination and giving a copy thereof to the director of human resources and the grievant's department head. Within ten (10) calendar days thereafter, the city manager or designee shall transmit to the clerk of the court a copy of the determination of the city manager or designee, a copy of the notice of appeal, and the exhibits. A list of the evidence furnished to the court shall also be furnished to the grievant. The failure of the city manager or designee to transmit the records shall not prejudice the rights of the grievant. The court, on motion of the grievant, may issue a writ of certiorari requiring the city manager or designee to transmit the record on or before a certain date. Within thirty (30) days of receipt of such record by the clerk, the court, sitting without a jury, shall hear the appeal on the record transmitted by the city manager or designee and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice may require. The court may affirm the determination, or may reverse or modify the determination. The decision of the court shall be rendered no later than the fifteenth day from the date of the conclusion of the hearing. The decision of the court is final and is not appealable.

(d) Failure of either party to comply with all substantial procedural requirements of the grievance procedure, without just cause will result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five (5) work days of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the director of human resources. The director of human resources or designated representative shall determine compliance and may require a clear written explanation of the basis for just cause extensions or exceptions. Compliance determinations made by the director of human resources or designated representative shall be subject to judicial review by filing a petition with the circuit court within thirty (30) calendar days of the compliance determination.

(e) The time periods outlined in this article constitute substantial procedural requirements. However, such time periods may be extended by mutual agreement between the grievant and the appropriate level of management to whom the time period is applicable. Whenever a person is required or permitted under this article to do an act within a prescribed time after receipt of a document, three (3) days shall be added to the prescribed time when the document is served by mail. In addition, if the due date for any act falls on a Saturday, Sunday, or city holiday, the next business day shall become the due date. Employees have the responsibility to report to their department head for disciplinary meetings when directed to do so. Employees shall make themselves available even when they are on administrative leave.

(f) The determination of a complaint as "non grievable" shall not be construed to restrict any employee's right to seek or management's right to provide customary administrative review of complaints outside the scope of the grievance procedure.

(g) The human resources department will provide procedural information and guidance to employees and management on issues of access, grievability and compliance.

(h) The issues of access and grievability shall be decided prior to the panel hearing or they shall be deemed to have been waived.

Sec. 2-186. Grievance procedure.

(a) *Management steps.* The first four steps of the grievance procedure provide an intermediate process for the resolution of complaints and disciplinary matters.

(1) *General provisions.*

- a. The first two management steps involve the employee's immediate supervisor. In departments with several levels of supervision, the department may specify the management level designated as the immediate supervisor for grievance purposes.
- b. In disciplinary matters, Steps I, II and III may be waived by agreement of both the employee and the appropriate levels of management.
- c. In grievances in which the action grieved (whether disciplinary or otherwise) was action taken by the department head, Steps I and II shall be waived.
- d. In situations where the employee's immediate supervisor is also the department head, Steps II and III of the procedure shall be combined.
- e. Personal face-to-face meetings between the appropriate level of management and the employee are required at all steps.
- f. With the exception of Step IV, the only persons who may normally be present in the management step meetings are the grievant, the appropriate manager at the level at which the grievance is being heard and appropriate witnesses for each side. Witnesses shall be present in the management step meetings only while actually providing testimony.

At Step IV, the grievant and management may each have present a representative of his or her choice. If the grievant is represented by legal counsel, management likewise has the option of being represented by

counsel. When an employee is represented, any cost of representation is at the employee's expense.

- g. All grievances processed through management Steps II, III, and IV shall be processed on forms provided by the city. The human resources department will provide procedural assistance to both parties in the completion of grievance forms.
 - h. Once a grievance has been reduced to writing, it may not be changed or amended unless agreed to by the grievant and the level of management at that step. Any different or additional grievance issues must be pursued through a separate grievance proceeding.
- (2) *Step I.* Any employee who feels aggrieved may bring the situation to the attention of his immediate supervisor, explaining the nature of the problem and his suggested solution.

It is not necessary for a complaint to be reduced to writing; however, the supervisor should routinely document this action with the assumption that it could be the first step of a formal grievance. Any such complaint or grievance shall be made within twenty (20) calendar days after the event or action which is the basis for the grievance. The supervisor shall give his verbal or written response to the employee within seven (7) calendar days after the situation has been brought to his attention. If no response is given within that seven (7) day period, it shall be deemed denied.

- (3) *Step II.* If discussion between the employee and the immediate supervisor fails to settle the matter, the grievance shall be reduced to writing on a grievance form provided by the city.

The employee must present the written grievance to his supervisor (or the department head when the event or action was taken by the department head) within seven (7) calendar days from the date the supervisor responded. If the supervisor failed to respond at Step I, the employee has seven (7) calendar days from the date the supervisor's response was due to present his written grievance. Once the employee reduces his grievance to writing, he must specify on the grievance form the specific relief he expects to obtain.

The supervisor will immediately acknowledge receipt of the grievance form by his dated signature.

The supervisor shall then contact the human resources department to obtain a control number which he shall write on the grievance form, and then provide a copy of the grievance form to the human resources department.

The immediate supervisor shall, within seven (7) calendar days, meet and discuss the grievance with the employee. Within seven (7) calendar days after such meeting, the supervisor shall respond to the employee in writing on the grievance form, and shall include the date of the meeting and the date of the decision. The immediate supervisor shall return the original grievance form to the grievant who shall sign and date it. The immediate supervisor shall provide a copy of this signed grievance form to the human resources department.

- (4) *Step III.* If the immediate supervisor's response does not resolve the grievance the employee may appeal to the department head within seven (7) calendar days of receipt of the immediate supervisor's written response.

The employee must submit the appeal to the department head in writing on the grievance form.. Upon receipt of the grievance form, the department head or his representative should sign and date it and provide a copy to the human resources department.

The department head within seven (7) calendar days, shall meet and discuss the grievance with the employee. Within seven (7) calendar days after such meeting, the department head shall respond to the grievance in writing on the grievance form and include the date of the meeting and the date of the decision, and return the original to the grievant who shall sign and date the grievance form. The department head shall provide a copy of the signed grievance form to the human resources department.

- (5) *Step IV.* If the department head's response does not resolve the grievance, the grievant may appeal to the city manager within seven (7) calendar days of receipt of the department head's response.

The employee must submit the appeal to the city manager in writing on the grievance form. The city manager or an assistant city manager, or their designated employees, should sign and date the grievance form upon its receipt and provide a copy to the human resources department.

The city manager or his designated representative shall, within seven (7) calendar days, meet and discuss the grievance with the employee. Within seven (7) calendar days after such meeting, the city manager or his designated representative shall respond to the grievance. The city manager's or designated

representative's decision, the date of the meeting, and the date of the decision, shall be written on the grievance form and he shall return the original grievance form to the grievant and provide a copy to the human resources department.

If the city manager's response does not resolve the grievance, the employee may request a panel hearing.

(b) *Panel hearing.*

(1) *Request for a panel hearing.*

- a. A panel hearing may be requested when the city manager's response in Step IV of the grievance procedure does not resolve the grievance.
- b. The employee must make a request for a panel hearing to the director of human resources in writing on the original grievance form within seven (7) calendar days of receipt of the city manager's or designated representative's decision. The employee shall also complete a panel hearing request form which shall include the name of the panel member selected by the grievant and the name of the grievant's legal counsel, if any, within seven (7) calendar days of receipt of the city manager's or designated representative's decision.

(2) *Panel selection.*

- a. The panel shall be selected in the following manner: one (1) selected by the grievant, one (1) selected by the city manager, and the remaining member selected by the two (2) appointees. Selection of the city manager's appointee shall be made within seven (7) calendar days after receipt of the request for panel hearing. After the city manager has selected his appointee, the director of human resources or designated representative shall notify the two (2) appointees of their selection. The two (2) panel members shall select a third member within seven (7) calendar days after the notification of their selection as panel members, who shall serve as the chairperson; provided, however, this period may be extended an additional seven (7) calendar days by the two (2) appointees, if necessary. In the event that the agreement cannot be reached as to the final panel member, the Chief Judge of the Circuit Court of Newport News shall select such third panel member.
- b. Panel members shall be active, regular full time city employees. The panel is an impartial body selected to hear and decide the grievance on its merits. Therefore, in order to provide an impartial panel and to ensure the

protection of city employees, the following persons may not serve as panel members:

1. The following relatives of any participant in the grievance process and the relatives of any participant's spouse: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin.
 2. Supervisors and managers who are in a direct line of supervision of a grievant. Employees in the same department as the grievant may not serve on the panel.
 3. Any person having direct involvement with the grievance including any representative of the grievant and witnesses who have been involved at the management steps.
 4. Any attorney having direct involvement with the subject matter or a partner, associate, employee, co-employee or client of such an attorney.
 5. Employees of the human resources department, the city attorney's office, and the city manager's office.
 6. Persons who are or have been residents of the same household as the grievant are also prohibited from serving on the panel.
- c. Any person selected as a panel member may decline appointment in which case the appropriate party may make another selection.

(3) *Panel procedure.*

- a. The panel will set a date and time for the panel hearing. The hearing should occur within three (3) months of the date of the Step IV decision.
- b. Parties to the grievance shall not discuss the substance of any grievance or the problem giving rise to the grievance with any panel members prior to the hearing.
- c. The panel may, with just cause, extend the time periods applicable to the panel.
- d. The director of human resources, or designated representative, will coordinate the panel hearing and may correspond with panel members, grievants, the grievant's legal counsel, witnesses and others directly on behalf of the panel.

- e. The director of human resources, or designated representative, will provide the panel with copies of the grievance record prior to the hearing and provide the grievant with a list of the documents furnished to the panel at least ten (10) days prior to the scheduled panel hearing. Documents, exhibits, and a list of witnesses shall be exchanged between the grievant's legal counsel and management's legal counsel at least seven (7) days prior to the scheduled panel hearing, unless otherwise agreed. If the grievant is not represented by legal counsel, the parties shall provide such material to the human resources department at least seven (7) days prior to the scheduled panel hearing. Human resources will coordinate the exchange of the material between the parties in advance of the hearing. Upon the request of the grievant or his representative, the director of human resources, or designated representative, will also allow the grievant access to and copies of all relevant files intended to be used in the grievance proceeding.

(4) *Conduct of the panel hearing.*

- a. At the request of either the grievant or the city, the hearing shall be private. If private, only the panel members, the grievant, the grievant's legal counsel or other representative, the management representative, management's legal counsel, the witness who is testifying, and the court reporter, if any, shall be present at the hearing. If open, the panel shall nevertheless have full power and authority to close portions of the hearing and to determine what persons not having a direct involvement in the proceedings may remain in the hearing room. Witnesses, other than the grievant and the management representative, shall remain in the hearing room only while giving their testimony. Employees of the human resources department will be present throughout any hearing except when the panel is deliberating. The panel may seek the advice of the director of human resources, or designated representative, on grievance procedure questions.
- b. The grievant may be represented by legal counsel or other representative at his own expense. In the event that the grievant is represented by legal counsel, the city may likewise be represented by counsel.
- c. The taking of photographs in the hearing room during the progress of the grievance proceedings and the broadcasting of grievance proceedings by radio or television are prohibited.

- d. The panel shall conduct its hearing with its three (3) members present.
- e. The panel has the authority to determine the admissability of evidence without regard to the burden of proof, or the order of presentation of the evidence, so long as a full and equal opportunity is afforded to all parties for the presentation of their evidence.
- f. At the option of each party, opening statements may be made at the beginning of the hearing setting forth the issue(s) and the panel may ask for such statements in order to clarify the issue(s) involved in the grievance.
- g. There is no subpoena power to compel the attendance of witnesses in the grievance procedure. The panel may, however, at the request of either party or in its own discretion, request the voluntary appearance of witnesses. Witnesses shall be permitted in the hearing room only when giving their testimony. The sworn statement of an absent or unavailable witness shall be received as evidence by the panel.
- h. The panel hearing is an administrative process and is not meant to be conducted like proceedings in court. Panels are not bound by technical rules of evidence and shall take into account all reliable and substantial evidence produced at the hearing. It is within the province of the panel to determine relevancy and materiality. The panel may require either party to demonstrate relevancy and materiality of any evidence and the need for any requested extensions of the hearing panel.
- i. All evidence shall be presented in the presence of the panel and the parties unless by mutual consent of the parties.
- j. Evidence may be presented by the grievant along with any exhibits which shall be marked and made a part of the record. The panel may question any witness, including the grievant, and the grievant or his counsel may question any witnesses. The city's designated representative or counsel representing the city may also question witnesses and present evidence in the same manner afforded the grievant.
- k. The panel shall deal with the grievance before them. Evidence and testimony as to how other employees or situations have been handled in the past are not relevant. No personnel file or record may be examined by the panel or introduced into evidence, except that of the grievant.

- l. The grievant shall not be permitted to introduce any evidence before the panel which has not been previously presented or submitted during the management steps for management consideration.
- m. The panel by majority vote may decide procedural questions and rule upon objections raised during the course of the hearing.
- n. The parties shall produce such additional evidence as required by the panel.
- o. After both parties have had the opportunity to present their evidence, the panel chairperson shall inquire of both parties whether they have further evidence. Upon receiving negative replies, the hearing shall be closed. Both parties shall be given the opportunity to make closing statements, following which the panel shall retire to begin its deliberation.
- p. A court reporter shall record the grievance hearing, and the city shall bear the cost of the reporter's appearance fee. Any party ordering a copy of the transcript of the hearing shall bear the cost thereof. By agreement, the parties may waive having the hearing recorded by a court reporter.

(5) *Panel decision.*

- a. The panel shall render its decision in writing within ten (10) working days of the conclusion of the hearing unless the panel by majority vote extends the time period.
- b. The panel shall state in writing the reasons for its decision on the panel hearing response form. Copies of the decision shall be transmitted to the city manager, the director of human resources, the department head, the grievant, the grievant's supervisor and the attorneys for the parties, by the panel chairperson.
- c. The panel shall decide the case on the merits, not on whether there has been compliance with the procedural requirements of this article.
- d. The panel does not have the authority to formulate policies or procedures nor to alter existing policies and procedures. The panel shall make its decision within the following standards of review:
 - 1. The panel shall uphold the city if the evidence shows that the charges of misconduct were reasonable. If the panel finds that the

charges were not reasonable, the panel has the same authority and limitations as management to determine the appropriate charges and disciplinary action in accordance with applicable city policy.

2. In grievances involving termination for unsatisfactory work performance, failure to meet job standards, unacceptable attendance or other matters, the panel shall uphold the city's action if it determines that the action was reasonable under the circumstances. The panel is not empowered to establish or modify job standards, job requirements, or performance standards nor may the panel determine or change an employee's evaluation rating.
 3. In grievances involving complaints regarding application of policy, discrimination and other non-disciplinary issues, the panel will determine if policies and procedures have been appropriately applied. The panel is not empowered to promote, assign or transfer employees, to establish salaries nor to take any other action which is in the purview of management rights.
 4. The panel does not have the authority to consider determinations of grievability, determinations of access to the grievance procedure, or compliance determinations, made in accordance with section 2-185.
 5. The majority decision of the panel, acting within the scope of its authority, shall be final, subject to existing policies, procedures and law. In cases of law enforcement officers who have elected to proceed pursuant to section 9.1-504 of the Code of Virginia, 1950, as amended, the panel decision is advisory only to the city manager, but shall be accorded significant weight.
 6. The panel may not award back pay or benefits, damages, or attorney's fees.
- e. The city manager, after consultation with the director of human resources, has discretion to order all or some back pay and/or benefits to the grievant if the panel finds that the charges or action taken by the city were not reasonable.
 - f. The director of human resources may on his own action remand a decision which appears to be inconsistent with law and written policy to the panel for further consideration. All parties will be notified when a decision is

remanded. All three panel members must participate in the decision-making process.

- g. If either party refuses to implement a panel decision, the other party may petition the Circuit Court of Newport News to enforce the decision.

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